

REMARKS

Claims 1-46 are pending in this application. All of the pending claims are rejected. Claims 10 and 20 are currently amended. Reconsideration is respectfully requested.

Claims 10-15, 17-19, 26 and 37-46 are rejected under 35 U.S.C. 112, second paragraph as being indefinite. More particularly, claim 10 is rejected as claiming a device for which there is no structure or hardware recited in the body of the claim. The specification clearly describes physical devices at least with regard to figures 1 and 3. It is understood in the art that electronic devices typically include hardware and software that operate together to produce desired functionality. Rather than argue whether the logic is the software, hardware or a combination of both, claim 10 is currently amended to recite a non-transitory computer usable medium having a computer readable program code embodied therein which is code executed to implement the recited logic elements. Claims 37-46 are rejected as being ambiguously constructed and indeterminate in scope for allegedly claiming both a system and a method. Applicant is unable to find any reasonable interpretation of those claims as system claims. The phrase "in a communication system in which a terminal device accesses a communication network through one of a plurality of wireless access point devices that implement a first protocol layer of a wireless communication protocol and a back end device that implements a second protocol layer of the wireless communication protocol" is simply used to provide context for the recited method. Note that applicant is required by the Office to draft the claim as a single sentence. Whatever the merits of that requirement may be, it tends to make claims more difficult to read than a typical paragraph. For that reason and others, the examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more

suitable language or modes of expression are available.¹ Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.² Applicant will consider any suggestions the examiner cares to offer to improve clarity, but declines to amend the claims at this time because applicant is unable to find any reasonable interpretation of those claims as being system claims.

Claims 10-15, 17-26, 28, and 37-46 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The rejections with regard to claims 10-15, 17-26 and 28 mirror those of the section 112 rejection above and are overcome for the same reasons. Regarding claims 37-46, applicant respectfully traverses. The examiner asserts that the claims are directed to both a product and process in contradiction with the holding of *Ex Parte Lyell*. However, applicant is unable to find any reasonable interpretation of those claims as product claims. The preambles indicate that the claims are directed to a method, and the steps of the method are recited in the body of the claims. To the extent that the claims recite apparatus in the preambles it is simply to provide context for the recited method. As with the rejections under section 112, the examiner's focus is not to be whether more suitable language or modes of expression are available, and some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.

Claims 42-46 are rejected under 35 U.S.C. 103(a) based on US 6,061,563 (Lee) in view of US 6,539,494 (Abramson). As previously pointed out by applicant, Lee and Abramson do not consider the possibility of repairing or preventing failure of the backed-up device as recited in the pending claims. Rather, both references describe migration from a failed device to a non-failed peer. In other words, the presently recited invention focuses on maintaining the failing

¹ MPEP 2173.02

² *Id.*

device, whereas the cited combination abandons the failing device in favor of a new device. In contrast, the cited combination merely suggests communicating information from a first server to a second server via a backup server. These points of argument were described in greater detail in the previous response. In the Response to Arguments the examiner counters that the limitations are not recited in claim 42. However, claim 42 recites “using the saved information to facilitate connectivity between the terminal device and the first wireless access point.” It is noted that the other independent claims, and claim 37 specifically, recites “utilizing the saved state information, by the first wireless access point, to facilitate communication between the terminal device and the first wireless access point.” However, applicant fails to understand why the arguments would be considered valid for the second quoted limitation and not the first quoted limitation. Applicant therefore respectfully traverses.

This application is now considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below or handerson@smmalaw.com so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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